

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PERCY CHARLES DONER,)	
)	
Plaintiff,)	Case No. 1:10-cv-58-SJM-SPB
)	
v.)	
)	
BRADLEY MASON, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM JUDGMENT ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on March 8, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on February 25, 2011 [23], recommends that this Court grant the Defendants' motion to dismiss [15], which the Magistrate Judge construed and treated as a motion for summary judgment. The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Plaintiff by certified mail at SCI-Rockview, where he is incarcerated. On March 15, 2011, Plaintiff filed objections to the Report and Recommendation [25] and a supporting affidavit [24].

Upon de novo review of the complaint and documents in the case, together with the Report and Recommendation and Plaintiff's objections and supporting affidavit in response thereto, the Court concludes that genuine issues of material fact exist on the present record relative to Plaintiff's claim that the Defendants were deliberately indifferent to his health and safety by allegedly ignoring his concerns about threats he was receiving from other inmates, making summary judgment inappropriate as to that

particular claim. While the Magistrate Judge felt the evidence was insufficient to support an inference that the Defendants had actual knowledge of the risk that Plaintiff would be assaulted, I find the evidence sufficient to support such an inference.

Accordingly, I will deny the Defendants' motion insofar as it relates to that particular claim, but the dismissal will be without prejudice to revisit the issue, if appropriate, on a more fully developed record. In all other respects, the Magistrate Judge's Report and Recommendation will be adopted by this Court. Based on the foregoing, the following order is entered:

AND NOW, this 15th day of March, 2011;

IT IS ORDERED that the Defendants' motion for summary judgment [15] be, and hereby is, GRANTED in part and DENIED in part, as follows:

1. Said motion is GRANTED with respect to Plaintiff's claim that his rights under the Eighth and Fourteenth Amendments to the U.S. Constitution were violated by the Defendants' alleged deliberate indifference to his serious medical needs following the assault of July 2, 2008. Accordingly, JUDGMENT is hereby entered in favor of Defendants and against the Plaintiff, Percy Charles Doner, as to that claim; and
2. Said motion is DENIED with respect to Plaintiff's claim that his rights under the Eighth and Fourteenth Amendments to the U.S. Constitution were violated by the Defendants' alleged deliberate indifference to his health and safety by ignoring his concerns regarding threats he was receiving from other inmates.

The Report and Recommendation of Magistrate Judge Baxter, filed on February 25, 2011 [23], is adopted as the opinion of this Court to the extent set forth herein.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter